

November 29, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case:           Bowlín Travel Centers, Inc.

Date of Filing:        April 15, 2005

Case No.:              TEE-0020

On April 15, 2005, Bowlín Travel Centers Inc. (Bowlín) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," for the year 2005. As explained below, we have determined that Bowlín's request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form

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<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

EIA-782B<sup>2</sup> and permits reporting firms to rely on reasonable estimates.<sup>3</sup>

## *II. Exception Criteria*

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>5</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>6</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>7</sup> a combination of factors render the reporting requirement an undue burden.<sup>8</sup>

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<sup>2</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>3</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>4</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

<sup>6</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

<sup>7</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>8</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship to warranting relief.<sup>9</sup> Neither does the fact that a firm is relatively small or that it has filed reports for a number of years constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>10</sup>

### *III. Bowlin's Application for Exception*

Bowlin is a relatively small, publicly-owned motor gasoline retailer headquartered in Albuquerque, New Mexico. For the first time, beginning in February 1999, Bowlin was designated by EIA as a member of a sample group required to file Form EIA-782B each month for a period of three years.<sup>11</sup> Subsequently, the firm was then randomly selected to continue to report by filing the Form for another three year period beginning in February 2002. Then, Bowlin states, as a publicly-held entity, it came under the provisions of the Sarbanes-Oxley Act which require quarterly reports.<sup>12</sup> According to Bowlin, these reporting requirements together present an undue burden. Bowlin states that it is a small entity, there is only one person who must prepare both reports, and that responsibility may not be delegated.

Based upon a review of the Bowlin Application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted Bowlin to give the company an opportunity to discuss the request.<sup>13</sup> Bowlin's Chief Administrative Officer stated that she believes that the firm being selected to complete the EIA-782B reporting requirement along with Sarbanes-Oxley Reports presents an undue burden to the firm. She stated that it takes the firm approximately four hours per month to complete the EIA-782B reporting requirement. She stated that complying with both

<sup>9</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>10</sup> *Mulgrew. Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>11</sup> Bowlin's Application for Exception, submitted to OHA on April 15, 2005.

<sup>12</sup> 15 U.S.C. § 7211 et. seq.

<sup>13</sup> Telephone Conversation between Ronald D. Hester, OHA, and Kim D. Stake, *Bowlin Travel Centers, Inc.* (May 16, 2005).

government requirements is time consuming and is affecting other required job duties.<sup>14</sup>

#### IV. Analysis

Bowlin has not demonstrated that the reporting requirements together or separately -- pose a "special hardship, inequity, or unfair distribution of burdens." Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.<sup>15</sup> The burden of this requirement can be substantially reduced by the use of estimates.<sup>16</sup> In any case, the fact that Bowlin might require a little more time on average does not justify relief.

Bowlin's principal argument -- that the firm should not be required to complete Form EIA-782B and comply with the Sarbanes-Oxley Reports requirement -- does not provide the basis for an exception.<sup>17</sup> As discussed above, in order to obtain accurate information about the supply and demand for petroleum products, the EIA selects firms at random, may choose the same firm to participate in multiple EIA surveys, and requires data from firms of all sizes, not merely large firms. Firms are periodically rotated in and out of the EIA survey pool and those that are not chosen during one rotation may be selected to participate as part of a subsequent sample. The claim that Bowlin should not be required to comply with two different government reporting requirements does not establish the existence of an inequity or unfair distribution of burdens that could justify relief. Bowlin has not demonstrated it is uniquely affected; all firms are required to comply with a variety of regulations and statutes. The fact that Bowlin is subject to Sarbanes-Oxley reporting requirements does not in itself demonstrate that the reporting requirement of Form EIA-782B itself represents a special hardship.

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<sup>14</sup> *Id.*

<sup>15</sup> See Section 10 of General Instructions to Form EIA- 782B.

<sup>16</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>17</sup> See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable); see also *Taylor Oil Co.*, 27 DOE ¶ 81,010 (2000) (relief denied where the firm argued that the requirements were unduly burdensome because it had participated in filing the reports for many years).

As the foregoing indicates the firm has not demonstrated that it meets the standards for an exception request. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Bowlin Travel Centers Inc., Case No. TEE-0020, be, and hereby is denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: November 29, 2005